IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8367 of 2000

Date of Decision: 12-01-2006

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UNION OF INDIA & 3 - Petitioner(s)
Versus
A A MAKWANA - Respondent(s)

(for full cause title, see next sheet)

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Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Smt.Justice Abhilasha Kumari, Judge

Whether approved for reporting?

For the Petitioner(s):

MS AVANI S MEHTA, Adv.

None for the Respondent.

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PER : ABHILASHA KUMARI, JUDGE (ORAL):-

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This Special Civil Application has been preferred by the petitioner, Union of India,

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Whether reporters of Local Papers may be allowed to see the judgment?

being aggrieved by and dissatisfied with the order passed by the Central Administrative Tribunal, Ahmedabad bench (hereinafter referred **CAT**) in O.A. No.96/92, decided on 6th March, 2000 whereby the CAT has set-aside the order of punishment imposed upon the respondent (original applicant before the CAT) by the appellate authority as well as the order of the disciplinary authority and has directed the petitioner (original respondent before the CAT) not to treat the applicant as "reverted" and further directed that all the consequential benefits available to the respondent be allowed to him as per the rules.

Briefly stated, the facts of the case pleaded by the petitioner are that the respondent was in the service of the

petitioner as Senior TTI. The respondent was on duty on 5th April, 1990 in Gujarat Express, going from Ahmedabad to Bombay Central, in Sleeper Coach S-9. Soon after the train left Nadiad station, a Vigilance Inspector of the Railways carried out a surprise check, during which it was allegedly found that the applicant had allotted Berth No.1 and 2 to one Shri Gulabchand and his son, though RAC listed passengers were not allotted any berth. Further, it was found by the Vigilance Inspector that the berths were allotted to Gulabchand and his son after accepting a bribe of Rs.20/-. It was also found that there was a shortage of Rs.40/- after verification of the cash with the respondent at that point of time.

The matter was referred to the superior authority and the present respondent was

served with a charge-sheet. The Inquiry Officer found him guilty of charges levelled against him and as a consequence thereof, the disciplinary authority imposed the major penalty of removal from service upon the respondent. The respondent challenged this order of punishment before the appellate authority. The appeal of the respondent was partly allowed and the penalty of removal from service was reduced to that of reduction in rank as Senior TC in the grade of Rs.1200-2040 at the minimum of scale for a period of three years with the direction that thereafter he would be reverted back to his original position in the grade of Rs.1600-2660, at the stage from where he was removed from service namely Rs.1750. The respondent thereafter challenged the orders of the disciplinary authority as well as the appellate authority by filing original application before the CAT,

the decision of which has been assailed by way of the present Special Civil Application.

We have heard Ms.Avani S.Mehta, learned counsel for the petitioner. The respondent has been served but none has appeared on his behalf. It has been contended by the learned counsel for the petitioner that the impugned order of the CAT dated 6th March, 2000 is unsustainable since the CAT had no power to interfere with the quantum of punishment imposed by the disciplinary authority or to reappreciate the evidence recorded by the Inquiry Officer. It has been contended that since there was a shortage of cash for which the respondent was responsible, it casts a doubt upon his integrity and the penalty imposed upon him is just and proper. Moreover, the appellate authority, taking a lenient view, considered all aspects of the matter and

reduced the said penalty of removal to that of reduction in rank and there was no justification for the CAT to have set-aside the same. It is further contended that the CAT could have remanded the case to the Inquiry Officer or authority for reconsideration of penalty instead of passing an order of reinstatement. According to the learned counsel for the petitioner, the impugned order of the CAT dated 6th March, 2000 is liable to be set-aside for the above said reasons.

We have gone through the materials on record and perused the impugned order of the CAT dated 6th March, 2000. The charge against the respondent was two-fold which is reproduced herein below :

> **Shri A.A.Makwana, HTTE ADI while working as TTE in sleeper coach No.S/9 of 6UP of 5.4.89 ex ADI/BCT is charged for misconduct and that:**

i.he was having Rs.40/- short in his Rly. cash at the time of vigilance check between ND ANND.

ii.He had demanded and accepted Rs.20/- an illegal money from Shri Gulabchand and his son holding II M/E journey ticket bearing No. 7752 and 7753 JP/ADI for the allotment of 2 sleeper berths.

Admittedly, the major penalty of removal imposed upon the applicant was reduced by the appellate authority to that of reduction in rank. The appellate authority, after scrutinising the record and evidence, felt that the penalty of removal from service was a very harsh.

As far as the first count of the charge that the respondent was having Rs.40/- short in his railway cash at the time of vigilance check between Nadiad and Anand, it is relevant

to keep in mind that the vigilance check took place within one hour of the starting of the train from Ahmedabad, soon after it left the Nadiad station. The final destination of the train was Bombay Central and since the check was carried out within one hour from the starting of the train there was every possibility that the refunding of amounts to the passengers against the tickets was still going on and Rs.40/-, in the shape of two notes of Rs.20/- may have slipped out of the pocket of the respondent. The respondent had given the explanation that while collecting the cash from the passengers, two notes of Rs.20/- might have slipped away. This explanation was not accepted by the Vigilance Inspector, who reported the matter to the superior authority. Regarding the shortage of cash, this is the only material on record but unfortunately the appellate authority has not

discussed this point in its order and has merely stated that the employee has not been able to give a satisfactory explanation regarding shortage of railway cash after the departure of the train. In fact, he has observed that this explanation shows the negligence of the respondent.

It can also be seen that the verification of the cash is to be done on reaching the final destination of the journey and if at that point of time there is a shortage of cash, which is not made good by the concerned official, then it can be said that he is responsible for the said shortage and suitable action can be taken against him. In the present case, the surprise check has been done within one hour of the starting of the train, soon after it left the Nadiad station. Therefore, it cannot be said that there is

temporary misappropriation of Rs.40/- by the respondent since the train was yet to arrive at the final destination where the total amount of receipt was to be deposited. Had there been a shortage of cash on reaching the final destination, the respondent could be asked to deposit the same and only on his failure to do so, it could be said that he misappropriated the amount which fell short. This aspect of the matter, as rightly observed by the CAT, has not been considered or discussed either by the Inquiry Officer or by the appellate authority. In fact, we find that there is no evidence whatsoever on the basis of the material on record that the respondent has misappropriated the amount of Rs.40/-. The charge regarding shortage of cash, being taken as misappropriation of the amount falling short, is based on no clear or cogent evidence that the amount fell short due to

misappropriation by the respondent.

As far as the charge of having accepted Rs.20/- as an illegal gratification from Shri Gulabchand and his son is concerned, there is no evidence that the respondent demanded money in the form of bribe from Shri Gulabchand. In his original statement given at the time of vigilance check Shri Gulabchand has merely stated that the respondent took Rs.20/- after the train started from ADI and the receipt was not given by him. In the cross-examination Shri Gulabchand deposed that he did not make any attempt to give illegal gratification of Rs.20/- to the respondent and no sooner had he paid Rs.20/- the respondent was immediately called by the checking party before he could part with the receipt and collect the balance amount. The appellate authority has also observed that the original statement of Shri

Gulabchand, by itself does not give any conclusive proof of the fact that bribe of Rs.20/- was demanded and accepted by the respondent. Unfortunately, no clarification was obtained by the authorities whether Rs.20/- paid by Shri Gulabchand was illegal gratification or whether he was expecting a receipt for the same. Just because a receipt has not been issued for Rs.20/- it cannot be presumed that the said amount was given by way of illegal gratification.

Normally, the courts and tribunals are precluded from reappreciating the evidence in a case of departmental inquiry, where penalty has been inflicted. However, the courts can judicially review the findings of the inquiry if there is a procedural lapse or the case suffers from *malafide* or when there is no evidence in support of the findings arrived

at. If the charge is based on no evidence, then the Court/Tribunal may interfere and mould the relief, in order to do substantial justice to the parties. The Supreme Court, in ***AIR 1996 SC 484,*** **B.C.Chaturvedi v/s. Union of India and others**, has observed as follows :

> **"Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence.**

Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at the own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry of where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."

(emphasis supplied)

In the present case, we find that there is no evidence whatsoever to sustain either of

the charges with which the respondent has been charged. The charge of misappropriation of Rs.40/-, which was found short at the time of vigilance check, rests upon no plausible ground and there is no evidence to the effect that the respondent, in fact, misappropriated the said amount. Moreover, the explanation of the respondent that Rs.40/- in the form of Rs.20 notes might have slipped away was not accepted and was attributed to be a negligent act on his part by the appellate authority. Similarly, there is not an iota of evidence of misappropriation of Rs.40/- by the respondent, when the train was yet to reach the final destination and the cash was to be finally verified. Had the respondent failed to deposit the amount of Rs.40/-, being shortage of cash at the end of the journey, then he could have been charged with misappropriation of the amount. This charge seems to be baseless, even

otherwise, not been dealt with by the appellate authority in its proper perspective. Clearly, it seems to be a case of no evidence.

In view of the above discussion, we find that there is no illegality or infirmity in the order dated 6th March, 2000 passed by the CAT in O.A. No.96/92. The petition is, therefore, dismissed. Rule is discharged. Interim order stands vacated.

(Bhawani Singh)
Chief Justice

(Abhilasha Kumari)
Judge

(moin)